

REMARKS:

Claims 1-29 are currently pending in the application. The status of the subject Application, as of the Office Action mailed 27 July 2005, is as follows:

Claims 11-24 stand withdrawn without prejudice or disclaimer; however, the Applicants respectfully request that if the Examiner withdraws the restriction with respect to any non-elected claims, the Examiner reinstate and examine those claims. Claims 1-10 and 25-29 stand rejected under 35 U.S.C. § 112, second paragraph. Claims 1-10 and 25-29 also stand rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 6,151,582 B2 to Huang et al. ("Huang") in view of Dobler's Production and Inventory Control Handbook, Chapter 10 Capacity Planning, 3rd Ed., ("Greene"). Claims 1-10 and 25-29 stand rejected under 35 U.S.C. § 103(a) over Huang in view of Dobler's Purchasing and Supply Management, Text & Cases, Chapter 22 Production Planning, ("Dobler").

A Notice of Non-Compliant Amendment under 37 C.F.R. § 1.121 was mailed to the undersigned on 22 December 2005. The Notice of Non-Compliant Amendment indicated that the "Applicants have not shown where in the original specification Applicants allegedly have support for their claim amendments such as 'd[e]viation from nominal capacity.'" (22 December 2005 Notice of Non-Compliant Amendment, Page 2). In addition, the Notice of Non-Compliant Amendment further indicated that "[b]y providing this information now, Applicants have an opportunity to correct this deficiency before (or if) the application is made final." (22 December 2005 Notice of Non-Compliant Amendment, Page 2).

The Applicants reiterate here the arguments set forth in the Amendment Response filed on 29 September 2005, as if fully set forth herein. In the Office Action mailed 27 July 2005, the Examiner asserted that claims 1-10 and 25-29 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Specifically, the Examiner maintained that the phrase "capacity extreme" in claims 1, 15, 24, and 25 renders those claims indefinite. (27 July 2005 Office Action, Pages 2-3). The Applicants respectfully disagreed.

Nonetheless, the Applicants canceled without prejudice claim 25 and amended claims 1, 4, 7-9, and 26-29 to remove the phrase “capacity extreme” in an effort to expedite prosecution of this Application and to more particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. By making these amendments, the Applicant did not indicate agreement with or acquiescence to the Examiner’s position with respect to the rejections of these claims under 35 U.S.C. § 112, as set forth in the Office Action. Particularly, the Applicants reserved the right to file additional claims in this Application or through a continuation patent application of substantially the same scope of originally filed claims 1, 4, 7-9, and 25-29.

As an example, the Applicants respectfully direct the Examiners attention to independent claim 1, this claim recites:

A system for ***managing a deviation from nominal capacity at a first entity in a supply chain***, comprising:

a planning application operable to ***receive status data*** for at least the first entity ***reflecting the deviation from nominal capacity*** at the first entity and to ***generate a plan*** according to the status data; and

a manager application operable to ***receive the plan and***, according to the plan, to ***automatically initiate at least one service in an attempt to resolve at least a portion of the deviation from nominal capacity*** through interaction with one or more other entities, the manager application operable to select the service from among a plurality of available services based on a monetary value to the first entity of a resolution expected to be available using the selected service relative to other services. (Emphasis Added).

Additionally, the Applicants direct the Examiners attention to the specification of the subject Application:

The present invention provides a number of technical advantages over previous techniques. The present invention provides an electronic marketplace solution to allow multiple suppliers and buyers to collaboratively ***resolve capacity extremes*** that cannot typically be handled using conventional planned procurement techniques. The present invention helps to ***optimize supplier operations*** by providing substantially instantaneous visibility into demand and supply at other members of the value chain and propagating demand and supply throughout the value chain ***to enable suppliers to offload or procure items sufficient to resolve excesses***

and deficits in capacity. The present invention may reduce administrative lead times and **allow suppliers such as manufacturers to operate at maximum plant capacity and thus with maximum efficiency and minimum overhead.** If capacity extremes are encountered, such manufacturers can compensate rapidly using the intelligent resources of the marketplace. The present invention provides the marketplace with visibility into real constraints and details needed to understand the issues, evaluate alternatives, and facilitate the resolution of capacity extremes. (Page 4, Lines 4-17). (Emphasis Added).

The Applicants respectfully submit that the suspect phrase “**deviation from nominal capacity**” is definite and defined in the above cited-portion of the specification, in which Applicants are their own lexicographer. In view of the above cited-portion of the specification, the present invention allows “multiple suppliers and buyers to collaboratively **resolve capacity extremes**” and to “**optimize supplier operations**”. In addition, the present invention enables “suppliers to offload or procure items sufficient **to resolve excesses and deficits in capacity**” and to “**allow suppliers to operate at maximum plant capacity and thus maximum efficiency**”. In essence, the “**excesses and deficits in capacity**”, in the above cited-portion of the specification, means any deviation from nominal capacity outside the scope of maximum efficiency in a supply chain. Thus, the phrase “**deviation from nominal capacity**” is the deviation, or departure from, the nominal capacity in a supply chain, the nominal capacity being according to maximum plant capacity and not the excesses in capacity or the deficits in capacity. Where an explicit definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim. MPEP § 2111.02.

As another example, the Applicants respectfully direct the Examiners attention to independent claim 26, this claim recites:

A system for resolving excess or under capacity at one or more enterprises in a supply chain, comprising:

a supply chain planning application operable to receive status data for a plurality of enterprises in the supply chain, **the status data reflecting excess or under capacity** at a first enterprise in the supply chain, the planning application further operable to access a supply chain model incorporating at least these enterprises and to generate a supply chain plan according to the status data for at least these enterprises; and

a manager application operable to receive the plan, to automatically initiate at least one service according to the plan, and to automatically perform an action, in response to initiating the service, **to resolve at least a portion of the excess or under capacity** at the first enterprise through interaction with one or more other entities, the service being selected from among a plurality of available services based on a monetary value to the first entity of a resolution expected to be available using the selected service relative to other services, the action being selected from the group consisting of:

- sell items to one or more other entities according to a previously existing contract between the first enterprise and the one or more other entity;

- purchase items from one or more other entities according to a previously existing contract between the first enterprise and the one or more other entity;

- sell items to one or more other entities in an auction;

- purchase items from one or more other entities in a reverse auction;

- post items in a catalog of the first enterprise for sale to one or more other entities;

- purchase items posted in a catalog of one or more other entities;

- post items in an inventory listing service for sale to one or more other entities; and

- purchase items posted in an inventory listing service by one or more other entities.. (Emphasis Added).

Independent claims 27-29 recite similar limitations.

The Applicants respectfully submit that the phrase “**excess or under capacity**”, as recited in independent claim 26 is definite and defined in the specification. Additionally, the Applicants direct the Examiners attention to the specification of the subject Application:

FIGURE 1 illustrates an exemplary system 10 for **managing capacity extremes associated with one or more suppliers** 12 of products or other items. Each supplier 12 may be coupled to a business (B2B), business-to-consumer (B2C), or other electronic marketplace 14 that links supplier 12 to one or more other suppliers 12 or to buyers 16. As shown, a supplier 12a may be coupled to one or more first tier suppliers 12b which are in turn coupled to one or more second tier suppliers 12c. Depending on the nature of marketplace 14, **suppliers 12 may include manufacturers such as original equipment manufacturers (OEMs), component manufacturers or suppliers, distributors, wholesalers, retailers, or any other entities that supply items to other suppliers 12 or to buyers 16**

and that may experience excess or under capacity from time to time.

The present invention contemplates multiple suppliers 12 that are associated with the same enterprise, for example, multiple factories, assembly lines, or other entities associated with the same manufacturing enterprise. In general, marketplace 14 brokers pertinent data among the suppliers 12 ***to propagate demand and supply in order to net capacity across the value chain that incorporates suppliers 12. Although extremes of excess or under capacity are primarily described, the present invention encompasses management of any degree of excess or under capacity according to particular needs.*** (Page 6, Lines 4-17). (Emphasis Added).

In view of the above cited-portion of the specification, the Applicants define the phrase “***excess or under capacity***” as any degree of excess or under capacity that does not net capacity across the value chain that incorporates suppliers.

For at least these reasons, the Applicants respectfully submit that the phrase “***deviation from nominal capacity***” and “***excess or under capacity***” are definite and defined in the specification. The Applicants further submit that independent claims 1 and 26-29 are considered to be in full compliance with the requirements of 35 U.S.C. § 112. The Applicants further submit that independent claims 1 and 26-29 are in condition for allowance.

With respect to dependent claims 2-10, claims 2-10 depend from independent claim 1. As mentioned above, independent claim 1 is considered to be in full compliance with the requirements of 35 U.S.C. § 112. Thus, dependent claims 2-10 are considered to be in condition for allowance for at least the reason of depending from an allowable claim. Thus, the Applicants respectfully request that the rejection of claims 1-10 and 26-29 under 35 U.S.C. § 112 be reconsidered and that claims 1-10 and 26-29 be allowed.

CONCLUSION:

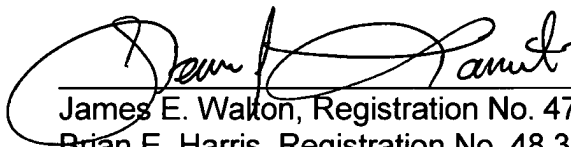
In view of the foregoing remarks, this application is considered to be in condition for allowance, and early reconsideration and a Notice of Allowance are earnestly solicited.

Although Applicants believe no fees are deemed to be necessary; the undersigned hereby authorizes the Commissioner to charge any additional fees which may be required, or credit any overpayments, to **Deposit Account No. 500777**.

Please link this application to Customer No. 53184 so that its status may be checked via the PAIR System.

Respectfully submitted,

1/23/06
Date



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